Exemption No. 9950

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
RENTON, WASHINGTON 98057-3356

In the matter of the petition of **Airbus** for an exemption from § 26.33 of Title 14, Code of Federal Regulations	**Regulatory Docket No. FAA-2009-0647**

GRANT OF EXEMPTION

By submission to the Department of Transportation's Federal Docket Management System (FDMS) dated July 9, 2009, Mr. Yves Regis, Head of Product Integrity, Airbus SAS, B35-0A7, 1 Rond-point Maurice Bellonte, 31707 Blagnac Cedex, France, petitioned the Federal Aviation Administration (FAA) for an exemption from the requirements of Title 14, Code of Federal Regulations (14 CFR) 26.33(c), (d), (e), (f) and (h). This exemption is requested for Airbus A300-600R passenger carrying airplanes. These models are identified on Type Certificate Data Sheet A35EU as A300, Models B4-605R and B4-622R. Section 26.33 is related to the development of flammability-reduction means or ignition-mitigation means for fuel tanks.

The petitioner requests relief from the following regulation:

§ 26.33(c), (d), (e), (f) and (h), which require the development of service instructions for making design changes to reduce the flammability or mitigate the effects of an ignition of fuel vapors and associated Instructions for Continue Airworthiness for fuel tanks determined to be highly flammable. This section also requires the development of compliance plans for accomplishing these activities.

The petitioner supports its request with the following information:

This information is quoted from Mr. Regis' July 9, 2009, petition letter. Minor edits have been made for clarity. The complete petition may be found in the docket.

Reasons why granting the request would be in the public interest

According to Airbus records and information, there will be no airplanes affected by 14 CFR 26.33(a) operated under 14 CFR 121, 125 and 129 after the first operational rule retrofit compliance date, i.e., December 27, 2014.

Only six A300-600R aircraft affected by 14 CFR 26.33 (as per §(a)) are currently registered in the U.S. for passenger carrying operations. These six aircraft are owned by the same 14 CFR 121 operator, American Airlines, who announced on July 2008 its intent to retire all of its A300-600 aircraft by the end of 2009. The serial and registration numbers of the concerned aircraft are as listed below:

MSN	Model	Delivery Date	Date of Airworthiness Certificate	Registration Number	FH Accumulated[1]	Take-Offs[1]	Retirement Date
0619	B4-605R	9 December 1991	07/01/1992	N700789	45,659	17,646	March 2009
0626	B4-605R	8 April 1992	11/05/1992	N77080	43,794	16,944	16 July 2009[2]
0639	B4-605R	24 July 1992	18/08/1992	N59081	42,899	17,224	15 January 2009
0643	B4-605R	11 September 1992	30/09/1992	N7082A	42,561	16,398	29 March 2009
0645	B4-605R	2 October 1992	20/11/1992	N7083A	42,118	16,329	9 May 2009
0675	B4-605R	12 February 1993	23/03/1993	N80084	41,922	16,090	4 September 2009[2]

Notes:

1 - Correct as at January 2009.

2 – Planned date.

According to the information available at Airbus, only two of these aircraft (MSN 626 & 675) are still in operation at the time of petitioning. They will be removed from operation and parked by September 2009. The other four aircraft are already removed from operation and parked.

Airbus understands that American Airlines intends to sell these six aircraft. Given the age of the aircraft and the history of the U.S. registry for the A300-600R family, Airbus considers it unlikely that any of the aircraft being retired from the American Airlines fleet will return to 14 CFR 121, 125 or 129 passenger-carrying service in the future. Experience shows that, when changing operators, A300-600R aircraft, are now mostly converted to all-cargo operation.

Airbus notes that since the registration of the last aircraft delivered to American Airlines in 1993 no passenger carrying A300-600 aircraft have been added to the U.S. registry. Following cessation of A300-600 production and with the worldwide fleet getting older and subsequently reducing in number, it is very unlikely that any passenger carrying A300-600 aircraft will be added to the U.S. registry in the future.

Airbus, therefore, finds that granting this exemption is in the public interest as a whole. It will avoid the DAH [design approval holder] and the FAA to spend efforts on developing and certifying design changes that would have no actual safety benefit, since no concerned passenger carrying aircraft would be operated under 14 CFR 121, 125 or 129 at the time of the first retrofit target is passed. The saved efforts would benefit other safety initiatives with more tangible benefits for the public as a whole.

Reasons why granting the exemption would not adversely affect safety

Airbus considers that granting this exemption will not adversely affect safety for the same reason as detailed above, i.e., there will be no airplane affected by 14 CFR 26.33(a) operated under 14 CFR 121, 125 and 129 after the first operational rule retrofit compliance date prescribed by these later rules, i.e., December 27, 2014.

Any additional information, views or arguments available to support the exemption request

Airbus understands from publicly available information that the FAA already granted exemptions from other CFR 26 requirements to other DAHs that have affected aircraft models with a very low likelihood of being operated under CFR 121, 125 or 129 after the associated operational rule compliance date. Considering these precedents, Airbus kindly requests the FAA to expedite the present petition so that Airbus can effectively be exempt from the need to submit a compliance plan for design changes on July 24, 2009 as required by CFR 26.33(h).

In addition, Airbus wishes to inform the FAA that design changes are being currently defined in order to reduce the A300-600R fuel center tank flammability exposure below 7%, although not down to the levels required per CFR 26.33(c)(1) (through the reference to Appendix M to CFR 25). In the unlikely event that a U.S. operator wishes to operate A300-600R passenger carrying aircraft under CFR 121, 125 or 129 in the future, these design changes could be proposed as mitigation means to rescind the presently requested exemption and replace it with another one that could allow aircraft operation while not adversely affecting safety.

The reason to exercise the privileges of the requested exemption outside the United States if needed

To the best of Airbus' knowledge, no N-registered airplanes affected by this rule are operated outside of the United States. There is therefore no need to exercise the privileges of the requested exemption outside of the United States.

Federal Register publication

A summary of the petition was published in the *Federal Register* on July 27, 2009 (74 FR 37091). No comments were received.

The FAA's analysis

The FAA has developed criteria to consider when deciding whether to grant or deny a design approval holder's (DAH) petition for exemption from part 26 requirements. These criteria were meant as a general guide to making decisions about such requests and were not developed for any specific request. The FAA uses these criteria as a starting point for making its decision. However, other factors may also be considered before a final decision is made on any particular exemption request.

The criteria are illustrated in the following table.

Table 1

Criteria for Considering Eligibility for Exemption from § 26.33

Item	If the airworthiness authority for the state of design is	And	And	And	And	Then
1	The FAA	No airplanes are operating under part 121 and it is unlikely that any will do so in the future[3]	No airplanes are operating under part 125 and it is unlikely that any will do so in the future[3]	No airplanes are operating under part 129 (N-registered) and it is unlikely that any will do so in the future[3]	No airplanes are being operated by a foreign air carrier and it is unlikely that any will do so in the future[3]	The DAH may be eligible for an exemption
2	The FAA	Airplanes are operating under part 121 but no airplanes will be operated under part 121 after the operational-rule compliance date[1] and it is unlikely that any will return to such service in the future[3]	Airplanes are operating under part 125 but no airplanes will be operated under part 125 after the operational-rule compliance date[1] and it is unlikely that any will return to such service in the future[3]	Airplanes are operating under part 129 (N-registered) but no airplanes will be operated under part 129 (N-registered) after the operational-rule compliance date[1] and it is unlikely that any will return to such service in the future[3]	Airplanes are being operated by a foreign air carrier but no airplanes will be operated by a foreign air carrier after the operational-rule compliance date[1] and it is unlikely that any will return to such service in the future[3]	The DAH may be eligible for an exemption
3	Not the FAA	No airplanes are operating under part 121 and it is unlikely that any will do so in the future[3]	No airplanes are operating under part 125 and it is unlikely that any will do so in the future[3]	No airplanes are operating under part 129 (N-registered) and it is unlikely that any will do so in the future[3]		The DAH may be eligible for an exemption
4	Not the FAA	Airplanes are operating under part 121 but no airplanes will be operated under part 121 after the operational-rule compliance date[2] and it is unlikely that any will return to such service in the future[3]	Airplanes are operating under part 125 but no airplanes will be operated under part 125 after the operational-rule compliance date[2] and it is unlikely that any will return to such service in the future[3]	Airplanes are operating under part 129 (N-registered) but no airplanes will be operated under part 129 (N-registered) after the operational-rule compliance date[2] and it is unlikely that any will return to such service in the future[3]		The DAH may be eligible for an exemption

[1] The design-approval holder must demonstrate that these airplanes will not be operating under part 121, 125, or 129, or operated by a foreign air carrier, after the operational-rule compliance date by obtaining documentation of such from the current owners/operators of the airplanes.

[2] The design-approval holder must demonstrate that these airplanes will not be operating under part 121, 125, or 129 after the operational-rule compliance date by obtaining documentation of such from the current owners/operators of the airplanes.

[3] Arguments for the likelihood of an airplane not entering into air-carrier service in the future should center on the airplane's age and/or current configuration.

The determination of whether an airplane is operating under part 121, 125, or 129 is based on whether that particular airplane is listed on an air carrier's Operations Specifications.

The rationale behind the criteria contained in the table above is this: The rule requires DAHs to develop data for use by operators. If no operators for a particular airplane are required by the rules to use such data, it would be a poor use of resources for the DAH to develop it. Therefore, it benefits both the DAH and the public as a whole to spend resources on more important safety issues rather than on developing data that will not be used. In addition, granting such an exemption would not adversely affect safety because none of the airplanes would be required to incorporate the data, nor is it likely that there will be any in the future.

The FAA has reviewed Airbus' request and determined that granting this exemption would not have an adverse effect on public safety and would be in the public interest. Regarding the criteria in Table 1, the FAA is not the airworthiness authority for the state of design for Airbus A300-600R airplanes. No A300-600R airplanes meeting the applicability criteria of § 26.33(a) operate under parts 125 or 129. The only applicable A300-600R airplanes listed on an Operations Specifications for part 121 are owned by American Airlines. In support of Airbus' petition, Mr. William M. Cavitt, Vice President Engineering, American Airlines Maintenance and Engineering Center, Tulsa, Oklahoma, submitted a letter, dated July 30, 2009, to the FAA stating that American Airlines would cease A300-600 commercial operations by the end of September 2009. This letter has been placed in the docket. Therefore, no A300-600R airplanes meeting the applicability criteria of § 26.33(a) will operate under part 121 on or after the date that fleet retrofit is required in accordance with § 121.1117(d).

For the reasons listed by Airbus, the FAA agrees that it is unlikely that any A300-600R airplanes meeting the applicability criteria of § 26.33(a) will enter into new operations under parts 121, 125 or 129 (U.S. registered only). However, if in the unlikely event an operator does desire to operate one of these airplanes in these operating parts, §§ 121.1117, 125.509 and 129.117 require that a design change to the airplane's center fuel tank be installed that either reduces its flammability to the level required by § 26.33(c)(1)(i) or provides a means to mitigate the effects of an ignition of fuel vapors to the level required by § 26.33(c)(2). The FAA will add a note to Type Certificate Data Sheet A35EU to advise potential future operators of this requirement.

Airbus Model A300-600R airplanes meet the baseline exemption criteria for part 26. No other factors require consideration regarding Airbus' petition for exemption.

Additional information

This exemption grants relief to Airbus from having to meet the requirements of § 26.33(c), (d), (e), (f) and (h). This exemption does not grant relief from the related operational requirements contained in §§ 121.1117, 125.509, or 129.117. Should a person choose to operate an Airbus A300-600R airplane under part 121, 125, or 129 beyond the operational compliance deadlines as stated in §§ 121.1117, 125.509, or 129.117, that person will be required to comply with those operational requirements.

Supplemental Type Certificate (STC) holders

Section 26.35 applies to holders, and applicants for approvals, of certain design changes to airplanes meeting the applicability criteria of § 26.33(a). Section 26.35(a)(1) states that the installation of a fuel tank designed to be Normally Emptied that is installed by an STC approved before December 26, 2008, is an applicable design change. Section 26.35 requires holders of these STCs to submit to the FAA a flammability exposure analysis of the new fuel tank, an assessment of the fuel tank system as modified by their change, and depending of the results of the assessment, the development of design changes and service instructions. The FAA considered the impact on these existing STC holders (i.e., those meeting the applicability criteria of § 26.35(a)(1)) and whether a grant of exemption should be expanded to provide them relief as well. Because the baseline exemption criteria of Table 1 is met for A300-600R airplanes meeting the applicability criteria of § 26.33(a), the FAA has determined that it would not adversely affect public safety and would be in the public interest to expand this grant and provide relief from § 26.35 to holders of these existing STCs.

The FAA's decision

In consideration of the foregoing, I find that a grant of exemption to Airbus, and holders of STCs meeting the applicability criteria of § 26.35(a)(1), is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator, Airbus is hereby granted an exemption from § 26.33(c), (d), (e), (f) and (h) for A300-600R airplanes. Holders of STCs approved before December 26, 2008, that install fuel tanks designed to be Normally Emptied on Airbus A300-600R airplanes are hereby granted an exemption from § 26.35 for these STCs.

The FAA will add a note to Type Certificate Data Sheet A35EU to advise potential, future operators that a design change to the center fuel tank that either reduces its flammability to the level required by § 26.33(c)(1)(i) or provides a means to mitigate the effects of an ignition of fuel vapors to the level required by § 26.33(c)(2) is required to operate affected airplanes in parts 121, 125 or 129 (U.S. registered only) service.

Any STC holder who desires to use this exemption must send a request to the FAA to revise the STC limitations and conditions section to state that:

- this exemption has been applied,
- compliance with § 26.35 has not been demonstrated, and
- §§ 121.1117, 125.509 and 129.117 require that a Flammability Impact Mitigation Means be installed by the compliance times specified in those regulations, if required by § 26.35.

Issued in Renton, Washington, on OCT 27 2009

Stephen P. Boyd
Acting Manager, Transport Airplane Directorate
Aircraft Certification Service